



DEPARTMENT OF INDUSTRIAL RELATIONS

CAL-OSHA

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California's Occupational Safety and Health Administration (Cal-OSHA) is part of the cabinet-level Department of Industrial Relations (DIR). The agency administers California's programs ensuring the safety and health of government employees at the state and local levels.

Cal-OSHA was created by statute in October 1973 and its authority is outlined in Labor Code sections 140-49. It is approved and monitored by, and receives some funding from, the federal OSHA.

The Occupational Safety and Health Standards Board (OSB) is a quasi-legislative body empowered to adopt, review, amend, and repeal health and safety orders which affect California government employers and employees. Under section 6 of the Federal Occupational Safety and Health Act of 1970, California's safety and health standards must be at least as effective as the federal standards within six months of the adoption of a given federal standard. Current procedures require justification for the adoption of standards more stringent than the federal standards. In addition, OSB may grant interim or permanent variances from occupational safety and health standards to employers who can show that an alternative process would provide equal or superior safety to their employees.

The seven members of the OSB are appointed to four-year terms. Labor Code section 140 mandates the composition of the Board, which is comprised of two members from management, two from labor, one from the field of occupational health, one from occupational safety, and one from the general public.

The duty to investigate and enforce the safety and health orders rests with the Division of Occupational Safety and Health (DOSH). DOSH issues citations and abatement orders (granting a specific time period for remedying the violation), and levies civil and criminal penalties for serious, willful, and repeated violations. In addition to making routine investigations, DOSH is required by law

to investigate employee complaints and any accident causing serious injury, and to make follow-up inspections at the end of the abatement period.

The Cal-OSHA Consultation Service provides on-site health and safety recommendations to employers who request assistance. Consultants guide employers in adhering to Cal-OSHA standards without the threat of citations or fines.

The Appeals Board adjudicates disputes arising out of the enforcement of Cal-OSHA's standards.

MAJOR PROJECTS:

Report on Cal-OSHA. In August, the Senate Industrial Relations Committee issued a report comparing statistics of Cal-OSHA with those of federal OSHA. The Committee studied the effect of the recent transition of private sector enforcement from Cal-OSHA to federal OSHA on worker death, injury, and illness statistics. The Committee's findings include the following:

-From July to December 1987, the first six months during which federal OSHA began exercising jurisdiction in California's private sector, total work-related deaths rose 41% from the number of deaths which occurred and were reported under Cal-OSHA in the same six months of 1986. With federal OSHA exercising jurisdiction, the number of private sector deaths rose 53%, from 66 deaths in the same period in 1986 to 101 deaths in 1987. In the public sector, which remained under Cal-OSHA's jurisdiction, deaths declined 40%, from 10 to 6.

-For the first six months after federal OSHA began exercising jurisdiction in 1987, total work-related injuries and illnesses rose by 2,210 as compared to the same time period in 1986. The number of private sector injuries and illnesses rose 2,438 from 1986, while the totals for the public sector injuries and illnesses declined by 228.

Since the report was analytical and statistical in nature, it offered no opinions and made no conclusions. The statistics reveal, however, that the number of reported worker deaths, injuries, and illnesses occurring in California's private sector has increased

since federal OSHA began exercising jurisdiction.

Proposition 97. The November ballot contained Proposition 97, which would enable California voters to restore the private sector enforcement funds to Cal-OSHA cut by Governor Deukmejian in 1987. (See CRLR Vol. 8, No. 3 (Summer 1988) p. 97 and Vol. 7, No. 4 (Fall 1987) p. 80 for background information.) The measure would require that state budget legislation include enough funding "to fully carry out" the state's federally approved worker safety plan. A recent California poll by Mervin Field concluded that 58% of those surveyed would vote for Proposition 97, with 23% projected to vote against it. Despite strong public support for this measure, proponents have budgeted \$1 million for a pro-97 media campaign. To date, opponents of Proposition 97 have not staged an organized No-on-97 campaign. Governor Deukmejian filed an official ballot argument opposing the measure, but he is not expected to actively campaign against it.

Regulatory Changes. At its August 18 meeting, OSB voted to adopt proposed revisions to Title 8, Elevator Safety Orders, Article 7, section 3016(d)(4) and Title 24, Part 7, section 7-3016(d)(4), regarding access to elevator pits. The Board also voted to adopt proposed revisions to Title 8, Unfired Pressure Vessel Safety Orders, section 458(e), regarding the design and construction of NH₃ tanks. (NH₃ is the chemical notation for anhydrous ammonia, a chemical compound composed of nitrogen and hydrogen.)

On May 23, the Office of Administrative Law approved proposed amendments to Title 8, section 3009 (Elevator Safety Orders). (See CRLR Vol. 8, No. 2 (Spring 1988) p. 93 for background information.)

LEGISLATION:

The following is a status report on bills which were discussed in detail in CRLR Vol. 8, No. 3 (Summer 1988) at pages 97-98:

AB 867 (Floyd), as amended May 2, would have required the Director of the DIR to advise the federal government that California intends to continue the operation of Cal-OSHA and to take all necessary steps to secure matching federal funds to operate Cal-OSHA. This bill was vetoed by the Governor on September 30.

AB 2577 (Friedman), as amended February 22, concerned existing law which makes it a crime for specified



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people to willfully violate a safety order or other standard or provision when this violation results in death or prescribed impairment. This bill would have specified that nothing in these provisions prohibits a prosecution for manslaughter, but was also vetoed on September 30.

AB 2774 (Floyd), as amended August 12, was substantially altered and no longer relates to Cal-OSHA.

AB 3790 (Floyd), as amended August 8, would have required OSHA to adopt a standard concerning work involving contact with bodily fluids by September 1, 1989. This bill was vetoed on September 28.

AB 2999 (Speier), as amended August 18, prohibits any person from advertising for the removal of asbestos unless certified for that work, and requires inclusion of the certification or registration number in all advertising for such work. This bill requires the Contractors State License Board (CSLB) to make asbestos information available to the public upon request; it also requires that as a condition of certification by the CSLB, a contractor must also be registered with the DOSH. This bill was signed on September 20 (Chapter 1003, Statutes of 1988).

AB 3713 (Connelly), as amended August 24, requires, among other things, owners of any building constructed prior to 1979 who know that the building contains asbestos to provide written notice within fifteen days of the receipt of such information to all employees concerning the presence and location of asbestos in the building. This bill was signed by the Governor on September 29 (Chapter 1502, Statutes of 1988).

AB 3782 (Floyd). The Contractors License Law requires a contractor whose operations include asbestos-related work involving 100 square feet or more of asbestos-containing materials to register with the DOSH by filing an application containing specified information regarding the provision of health insurance coverage, workers' compensation, or a trust account to cover medical examinations and monitoring for each employee engaged in asbestos-related work. This bill, as amended August 22, would have permitted an employer, in addition to the trust account, to provide a surety bond or other approved security, so long as these methods guarantee coverage of the above costs. This bill was vetoed by the Governor on September 28.

AB 4229 (Bronzan) lengthens the duration of the extension granted for internal inspections of installed fired boilers, where operating experience and

the design of the boiler have demonstrated to the satisfaction of the DOSH that equivalent safety will be maintained. This bill was signed by the Governor and chaptered (Chapter 684, Statutes of 1988).

SB 1848 (Greene), regarding the restoration of Cal-OSHA, failed passage in the Assembly.

SB 2739 (Bergeson), *SB 1876 (Greene)*, *AB 2889 (Floyd)*, *AB 3002 (Speier)*, *AB 3693 (Margolin)*, *AB 2901 (Floyd)*, *AB 2888 (Floyd)*, and *AB 2884 (Margolin)* died in committee.

LITIGATION:

At this writing, no date for oral argument before the California Supreme Court has been scheduled in *Ixta, et al. v. Rinaldi*, No. C002805 (Third District Court of Appeal). (See CRLR Vol. 8, No. 3 (Summer 1988) pp. 98-99 and Vol. 8, No. 1 (Winter 1988) p. 85 for background information.)

RECENT MEETINGS:

At its May 19 meeting in Los Angeles, the Board heard comments from Sam Firestone, a former meter reader for the Los Angeles Department of Water and Power (DWP), regarding a complaint he had filed with the DOSH concerning his employer. The subject of the complaint was DWP's failure to provide transportation in the field to sanitary restroom facilities. In March 1986, the Division cited DWP for this violation of safety and health regulations. On appeal, an administrative law judge upheld the citation, but an Appeals Board subsequently overturned it, finding that Article 9 of the General Industry Safety Orders, which establishes toilet facility requirements for mobile crews, applies only to mobile crews dispatched to work at permanent places of employment maintained by their employer. Thus, no violation against DWP was established.

OSB Chairwoman Mary-Lou Smith suggested to Mr. Firestone that he review the applicable regulations, and file a petition to have them changed if they do not apply to his situation. On June 13, Mr. Firestone petitioned the Board to amend Article 9 by adopting language requiring that employers must provide access to sanitary facilities to all employees. At the Board's September 22 meeting in Los Angeles, Mr. Firestone's petition to amend the regulations was granted to the extent that the Division was directed to develop proposed revisions to Article 9 as necessary to clarify the application of the regulations to mobile work crews.

At its May 19 meeting, OSB granted

permanent variances to the following entities: Valley Lube Service from section 462(m)(3)(A), Title 8 (Unfired Pressure Vessel Safety Orders); JC Resorts and Buddhist Society of America from section 3000(c)(13), Title 8 (Elevator Safety Orders); Independent Order of Oddfellows, Jackson Lodge No. 36 and Bruce Heikkinen from section 3000(d)(11), Title 8 (Elevator Safety Orders).

At its June 23 meeting in San Francisco, OSB granted permanent variances to the following entities: Bramalea Pacific from section 3292(f), Title 8 (General Industry Safety Orders); City of Berkeley and 1345 Kingsley Court from section 3000(c)(13), Title 8 (Elevator Safety Orders); and Yolo Lodge No. 169, I.O.O.F. from section 3000(d)(11), Title 8 (Elevator Safety Orders).

Also at its June 23 meeting, the Board heard a petition from U.S. Elevator to amend section 3038(a), Title 8 of the Elevator Safety Orders, with respect to belt and chain driven machines. OSB Executive Officer Steve Jablonsky stated that the purpose of the request is to bring section 3038 up to date with the progress and developing technologies in the elevator industry. The Board voted to grant the petition to the extent that it be referred to an advisory committee to evaluate the proposed amendments.

At its July 21 meeting in San Diego, OSB granted permanent variances to the following entities: MD Developers and Residence Inn (Irvine) from section 3000(c)(13), Title 8 (Elevator Safety Orders); County of Riverside from sections 3022(c)(3)(B), 3040(b)(5), and 3041(a)(1), Title 8 (Elevator Safety Orders); County of Sacramento from sections 3022(c)(3)(B), 3040(b)(5), 3041(a)(1), and 3041(b), Title 8 (Elevator Safety Orders); and County of Fresno from section 3040(b)(5), Title 8 (Elevator Safety Orders).

Also at the July 21 meeting, Steve Jablonsky reported on the 1988-89 budget, which Governor Deukmejian signed on July 8. The Governor vetoed all the augmentations that the legislature had approved for the DIR, and in particular, he once again vetoed the restoration of funds for full Cal-OSHA enforcement. Jablonsky reported that the Board's budget is whole in that five positions were made permanent as requested. (See CRLR Vol. 8, No. 3 (Summer 1988) p. 99 for background information.)

At its August 18 meeting in Sacramento, OSB granted permanent variances to the following entities: Sandia



National Laboratory from sections 3011(a)(2), 3051, 3050(a), 3050(b)(1), and 3050(b)(2), Title 8 (Elevator Safety Orders); Residence Inn (Orange), San Leandro Unified School District, San Diego Community College District, Our Lady of Angels Church, and Los Angeles Mission from section 3000(c)(13), Title 8 (Elevator Safety Orders); Southern California Rapid Transit District from sections 3020(b)(18)(D), 3034(b)(4)(A), and 3090(b)(1)(B), Title 8 (Elevator Safety Orders); and County of El Dorado from sections 3041(a)(1), 3071(d)(1), 3071(i), and 3071(1), Title 8 (Elevator Safety Orders). OSB denied a permanent variance to Nordstrom, Inc., from section 3089(c)(13), Title 8 (Elevator Safety Orders).

Also at its August 18 meeting, the Board heard a petition from Otis Elevator Company, requesting that Title 8, sections 3040(b)(5) of the Elevator Safety Orders be amended with respect to emergency stop switches. The petitioner requested that the Elevator Safety Orders be revised to reflect the American Nation-

al Standards Institute (ANSI) rule, which now requires that in-car stop switches be either key-operated or locked behind a cover to prevent passenger use or misuse. The Board granted the petition to the extent that the Division was directed to review the proposal to amend section 3040(b)(5), revise it, and/or reconvene an advisory committee, if necessary.

At its September 22 meeting in Los Angeles, OSB granted permanent variances to the following entities: Custom Wood Products Manufacturing, Inc. from section 462(m)(3)(c), Title 8 (Unfired Pressure Vessel Safety Orders); Daley Corporate Center from section 3292(f), Title 8 (General Industry Safety Orders); Wanis Koyomejian and Solomon Equities from section 3000(c)(13), Title 8 (Elevator Safety Orders); and Northern Energy, Inc. from section 475(a), Title 8 (Unfired Pressure Vessel Safety Orders).

FUTURE MEETINGS:
December 15 in Sacramento.

and straying;

2. Division of Plant Industry—Protects home gardens, farms, forests, parks and other outdoor areas from the introduction and spread of harmful plant, weed and vertebrate pests;

3. Division of Inspection Services—Provides consumer protection and industry grading services on a wide range of agricultural commodities;

4. Division of Marketing Services—Produces crop and livestock reports, forecasts of production and market news information and other marketing services for agricultural producers, handlers and consumers; oversees the operation of marketing orders and administers the state's milk marketing program;

5. Division of Pest Management—Regulates the registration, sale and use of pesticides and works with growers, the University of California, county agricultural commissioners, state, federal and local departments of health, the United States Environmental Protection Agency and the pesticide industry;

6. Division of Measurement Standards—Oversees and coordinates the accuracy of weighing and measuring goods and services; and

7. Division of Fairs and Expositions—Assists the state's 80 district, county and citrus fairs in upgrading services and exhibits in response to the changing conditions of the state.

In addition, the executive office oversees the activities of the Division of Administrative Services, which includes Departmental Services, Financial Services, Personnel Management and Training and Development.

The Board of Food and Agriculture consists of the executive secretary, assistant executive secretary and 14 members who voluntarily represent different localities of the state. The Board inquires into the needs of the agricultural industry and the functions of the Department. It confers with and advises the Governor and the director as to how the Department can best serve the agricultural industry. In addition, it may make investigations, conduct hearings and prosecute actions concerning all matters and subjects under the jurisdiction of the Department.

At the local level, county agricultural commissioners are in charge of county departments of agriculture. County agricultural commissioners cooperate in the study and control of pests that may exist in their county. They provide public information concerning the work of the county department and the resources of their county, and make reports as to



DEPARTMENT OF FOOD AND AGRICULTURE

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The Department of Food and Agriculture (CDFA) promotes and protects California's agriculture and executes the provisions of the Agriculture Code which provide for the Department's organization, authorize it to expend available monies and prescribe various powers and duties. The legislature initially created the Department in 1880 to study "diseases of the vine." Today the Department's functions are numerous and complex.

The Department works to improve the quality of the environment and farm community through regulation and control of pesticides and through the exclusion, control and eradication of pests harmful to the state's farms, forests, parks and gardens. The Department also works to prevent fraud and deception in the marketing of agricultural products and commodities by assuring that everyone receives the true weight and measure of goods and services.

The Department collects information regarding agriculture, and issues, broadcasts and exhibits that information. This includes the conducting of surveys and investigations, and the maintenance of laboratories for the testing, examining and diagnosing of livestock and poultry diseases.

The executive office of the Department consists of the director and chief deputy director who are appointed by the Governor. The director, the executive officer in control of the Department, appoints two deputy directors, one of whom serves as legislative liaison and as executive secretary of the Board of Food and Agriculture. In addition to the director's general prescribed duties, he may also appoint committees to study and advise on special problems affecting the agricultural interests of the state and the work of the Department.

The executive office oversees the activities of seven operating divisions:

1. Division of Animal Industry—Provides inspections to assure that meat and dairy products are safe, wholesome and properly labeled and helps protect cattle producers from losses from theft